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LETTER DATED 1 SEPTEMBER 1999 FROM THE PERMANENT REPRESENTATIVE OF CROATIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith a letter from Mate Granić, Minister for Foreign Affairs of the Republic of Croatia, containing the position of the Republic of Croatia on its cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Ivan ŠIMONOVIĆ
Permanent Representative

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Annex

Letter dated 1 September 1999 from the Minister for Foreign Affairs of Croatia addressed to the President of the Security Council

It is my honour to address the Security Council, being prompted by the letter (S/1999/912) by Gabrielle Kirk McDonald, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), and to clarify the Croatian Government's positions concerning its cooperation with ICTY.

To date, Croatia has successfully cooperated with ICTY and intends to do so in the future. The problems encountered in Croatia's cooperation with ICTY, referred to in the Honourable Judge McDonald's letter, are mostly of a legal and procedural nature, and easy to overcome given just a little more good will and understanding.

The Croatian Government is surprised that the ICTY President has not taken into account the various and numerous examples of its good cooperation thus far. As a victim of aggression, the Republic of Croatia was the one that supported the idea of establishing ICTY and afterwards readily approved the opening of the ICTY Liaison Office in Zagreb. In order to fully facilitate its cooperation with ICTY, Croatia adopted a special Constitutional Act on cooperation with ICTY, thus eliminating from its domestic legislation any eventual impediments to such cooperation. In order to further improve cooperation, the Croatian Government set up its Office for Cooperation with ICTY, the Council of which is composed of the highest Government's officials.

The forms of Croatia's cooperation to date with ICTY are varied and numerous. They include the submission of documents, assistance in investigations in the field and other means of cooperation, including the most sensitive ones, such as assistance in the voluntary surrender of indicted persons and their extradition. I remind you that only three weeks ago the Republic of Croatia transferred the accused Vinko Martinović Štela to the Tribunal's custody. Information about Croatia's continued and close cooperation is amply provided in the White Paper on the Cooperation of Croatia with the ICTY which will soon be made available.

Occasional criticism of some aspects of the ICTY work was not intended to disrupt the Tribunal's operation. On the contrary, Croatia wanted to improve the work of ICTY and to harmonize it fully with the objectives and the mandate entrusted to it by the Security Council. Such as in the case of the differences in legal interpretation of the powers vested in the ICTY's Prosecutor, as regarding the issue of subpoena to States and individuals acting on behalf of a State as its high officials. On that occasion, Croatia successfully raised legal arguments regarding ICTY procedure.

In her letter to the Security Council, mentioning problems encountered in Croatia's cooperation with ICTY, the President of ICTY made reference to "the continuing refusal of the Republic of Croatia to surrender and transfer

Mladen Naletilić Tuta" and Croatia's challenging of the ICTY jurisdiction over the alleged crimes committed during the military-police actions "Flash" and "Storm". Both issues are of a legal and procedural nature and can be resolved through regular legal means.

Criminal proceedings against Mladen Naletilić Tuta are in progress before the County Court in Zagreb and the Croatian authorities preferred to have them completed in Croatia prior to his transfer to ICTY. However, in accordance with the Constitutional Act on cooperation with ICTY and the ICTY rules of procedure, Croatia is ready, through the procedure inscribed in the Constitutional Act, to approve the transfer of Mladen Naletilić Tuta to The Hague. The procedure for the transfer is in progress, and its delay has been caused by the seriously aggravated health conditions of the accused which has impeded the course of the procedure. Owing to the fact that Mr. Naletilić's health condition has improved, according to the medical report of 1 September 1999, the procedure for this transfer has now resumed in the County Court in Zagreb, in accordance with the provisions of the Constitutional Act on cooperation with ICTY. The Government of the Republic of Croatia shall implement the Court's decision with determination. Allow me to also note that some extraditions to ICTY and the International Criminal Tribunal for Rwanda by other States have taken much longer than the current extradition proceedings of Mr. Naletilić.

Croatia's sensitivity to any linkage of the military-police actions "Flash" and "Storm" to criminal acts stems from the fact that its previously occupied territories were liberated in these operations. As a consequence, a new balance was established in the region, favouring the victims of aggression, which proved a prerequisite for successful negotiations and completion of the Dayton peace accords. However, Croatia concedes that, on the sidelines of such an entirely legitimate operation, some irresponsible individuals may have committed criminal acts. Croatian judicial authorities have already sanctioned some of the perpetrators. Differences between the Croatian bodies and the Tribunal on the obligation to transfer some of the documents in connection with "Flash" and "Storm" are mostly of a procedural nature.

Following the request of the ICTY Prosecutor for some documents related to the "Flash" and "Storm" operations, Croatia's legal representative has complained that these cases go beyond the ICTY jurisdiction and has suggested that this important legal issue be decided upon by the Tribunal. The Republic of Croatia is of the opinion that, to this end, there are appropriate mechanisms envisaged in the rules of procedure and evidence and that, through them, ICTY can arrive at appropriate conclusions and decisions. The previous procedure on the subpoena question, which included the assistance of prominent international legal experts acting as amici curiae may serve as a model. Therefore, it is our proposal that the disputed issue between the Republic of Croatia and ICTY be resolved by its Chamber. Enabling ICTY to decide on cases involving a disagreement on legal issues between the ICTY Prosecutor and individual States would strengthen the confidence of States in the work of ICTY as a whole.

We reiterate that the Republic of Croatia will honour the ICTY decisions, as it did before. The Republic of Croatia shall also respect a possible advisory opinion of the International Court of Justice should the Security Council seek such an opinion regarding this matter.

Finally, the Republic of Croatia regrets that the outlined problems concerning its cooperation with ICTY appeared before the Security Council and expresses its hope that they will soon be successfully resolved by legal means and in direct communication with the Tribunal. To this end, Croatia will forward a letter to the ICTY President with the appropriate proposals.

(Signed) Dr. Mate GRANIĆ